

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: August 1, 2014

Issued by: _____

Address of
local office: Federal Court of Appeal
1801 Hollis Street, Suite 1720
Halifax, Nova Scotia, B3J 3N4

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Ms. Cathy Murphy, Secretary
Tel: 819-997-0099
Fax: 819-953-5253

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104 (the “New Rules”) made by the Canadian Transportation Agency (the “Agency”) and published in the *Canada Gazette* on May 21, 2014.

THE APPELLANT ASKS that:

- (i) this Honourable Court quash subsections 41(2)(b), 41(2)(c), and 41(2)(d) of the New Rules and declare these provisions to be *ultra vires* the powers of the Agency and/or invalid and/or of no force or effect;
- (ii) this Honourable Court declare that the New Rules are invalid because they are unreasonable and establish inherently unfair procedures that are inconsistent with the intent of Parliament in establishing the Agency;
- (iii) this Honourable Court refer the New Rules back to the Agency with directions to revise them within 60 days by establishing rules that:
 - (a) provide parties a reasonable opportunity to respond and object to requests of non-parties to intervene;
 - (b) require the Agency to provide reasons in support of any of its orders and decisions that do not allow the relief requested, or if opposition has been expressed; and
 - (c) govern examinations of deponents and affiants, oral hearings, and in particular, requests for oral hearings.
- (iv) the Appellant be awarded costs and/or reasonable out-of-pocket expenses incurred in relation to the appeal; and
- (v) this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. Section 44 of the New Rules repeals the *Canadian Transportation Agency General Rules*, S.O.R./2005-35 (the “Old Rules”).

***Ultra vires* provisions**

2. Subsections 41(2)(b), 41(2)(c), and 41(2)(d) of the New Rules are *ultra vires* and/or invalid, because:
 - (a) they purport to grant the Agency powers that Parliament never conferred upon the Agency; and
 - (b) they are inconsistent with the doctrine of *functus officio*.

Denial of natural justice and access to justice

3. A significant portion of the dispute proceedings before the Agency involve unrepresented individuals with no legal knowledge or experience as applicants, and airlines represented by counsel as respondents.
4. The Agency’s longstanding position has been that its rules provide a complete code of procedure that unrepresented parties can read and understand.
5. The New Rules are unreasonable and establish inherently unfair procedures that are inconsistent with the intent of Parliament in establishing the Agency, because:
 - (a) section 29 of the New Rules deprives parties of any opportunity to respond and object to requests of non-parties to intervene;
 - (b) the New Rules abolish the requirement that the Agency provide reasons in support of any of its orders and decisions that do not

allow the relief requested, or if opposition has been expressed (section 36 of the Old Rules); and

- (c) the New Rules abolish all provisions about examinations of deponents or affiants (section 34 of the Old Rules) and about oral hearings (sections 48-66 of the Old Rules).

Statutes and regulations relied on

- 6. Sections 17, 25, 29, 32, and 41 of the *Canada Transportation Act*, S.C. 1996, c. 10.
- 7. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

August 1, 2014

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

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Appellant